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12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

17 JAMES ARTHUR RAY,

18 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**OPPOSITION TO REQUEST TO
UNSEAL DOCUMENTS**

19
20 Appellant James A. Ray, by and through his undersigned attorneys, hereby opposes the
21 request by Mark Duncan on behalf of *The Daily Courier* to unseal all documents relating to Mr.
22 Ray's request for reduced bail. As explained below, the requested material is private, contains
23 sensitive personal information, and has no value to the public. The *Courier's* request should be
24 denied.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Mr. Ray objects to the request by Mark Duncan, on behalf of the *Daily Courier*, to unseal
3 Mr. Ray's very personal and private financial records filed in support of his motion for reduced
4 bail. Mr. Ray supported his motion for reduced bail with six declarations, including two from his
5 accountant and his company's financial controller; all six were filed under seal and pursuant to
6 Mr. Ray's request for a protective order. *See* Def. James Arthur Ray's Notice of Mot. and Mot.
7 for Reduced Bail (filed Feb. 4, 2010). So too was the State's response. *See* State's Resp. to Mot.
8 for Reduced Bail (filed Feb. 13, 2010); State's Req. To File its Resp. to Mot. for Reduced Bail
9 under Seal (filed on Feb. 13, 2010). The Court granted Mr. Ray's and the State's request to seal
10 the documents and issued a protective order. *See e.g.*, Order Granting State's Req. To File Resp.
11 under Seal (filed Feb. 17, 2010). At a February 22 hearing, the Court confirmed that the
12 previously sealed records would "remain sealed," Feb. 22, 2010 Minute Order, and two days later
13 ordered the Clerk to "maintain under seal any copies of those previously sealed documents which
14 were admitted as exhibits at the hearing" on Mr. Ray's motion to reduce bail, Ct. Order Re:
15 Sealed Docs. (filed Feb. 24, 2010).

16 As Mr. Ray argued, and the Court found, Mr. Ray's personal and corporate tax returns and
17 W2s, the monthly statements for the bank accounts connected to Mr. Ray and his business, and
18 his company's profits and loss statements are precisely the sort of "sensitive and confidential"
19 information that is properly subject to a protective order. Fourth Decl. of Luis Li in Supp. of Def.
20 James Arthur Ray's Mot. for Reduced Bail at ¶ 1; *see e.g.*, Ariz. R. Sup. Ct. 123(c)(1) (noting
21 that despite the presumption that judicial records are open to the public, the "possible
22 countervailing interests of confidentiality, privacy or the best interests of the state" may justify
23 that "public access to some court records [] be restricted").¹

24 Indeed, as the Arizona Supreme Court explained in addressing the scope of Rule 123,
25 "sometimes the benefits of public disclosure must yield to the burden imposed on private
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27 ¹ Judicial records are governed by Arizona Rule of the Supreme Court 123, not Arizona's public records
28 statute, A.R.S. § 39-121.01. *See Arpaio v. Davis*, 221 Ariz. 116, 120, 210 P.3d 1287, 1291 (Ariz. Ct. App.
2009) (citing *London v. Broderick*, 206 Ariz. 490, 80 P.3d 769 (Ariz. 2003)).

1 individuals . . . by disclosure. Such circumstances have spawned common-law limitations on
2 public disclosure to protect *privacy interests, confidential information*, and certain governmental
3 interests.” *London v. Broderick*, 206 Ariz. 490, 493, 80 P.3d 769, 772 (Ariz. 2003) (en banc)
4 (emphasis added). For example, there is a “narrow exception” to the “‘strong [common law]
5 presumption in favor of access’ . . . for documents that were (1) subject to a protective order
6 issued by a court pursuant to a finding of good cause, and (2) attached to non-dispositive
7 motions.” *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 429–30 (9th
8 Cir. 2011) (quoting *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
9 2006)). Here, the Court found good cause to seal the exhibits related to Mr. Ray’s motion for
10 reduced bail, and there is no dispute that the motion was “non-dispositive.” Accordingly, the
11 burden is on the party “*seeking disclosure*,” i.e., the *Courier*, “to ‘present sufficiently compelling
12 reasons why the sealed discovery document should be released.’” *Id.* at 430 (quoting *Phillips ex*
13 *rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)) (emphasis
14 added). At a minimum, the Court should not release the requested documents without a showing
15 by the *Courier* of “compelling reasons” for their desired disclosure.

16 As a practical matter, though, there is little reason to engage in this burden shifting: if ever
17 the public had an interest in Mr. Ray’s real estate investments, that interest was nowhere close to
18 “compelling”—and it has long since evaporated. The “‘public interest” is not synonymous with
19 ‘public curiosity.’” *Schoeneweis v. Hamner*, 223 Ariz. 169, 175, 221 P.3d 48, 54 n.5 (Ariz. Ct.
20 App. 2009). That a records request concerns “a prominent sports figure,” as in *Schoeneweis*, or a
21 prominent author, as here, “does not affect [the] analysis in any way. The principle of equal
22 treatment under law is fundamental and the tenets of open government embodied in the Public
23 Records Law” and Rule 123² “are not altered by the relative fame or obscurity of those involved.”
24 *Id.* The Court should deny the *Courier*’s request to unseal the documents related to Mr. Ray’s
25 motion for reduced bail.

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27 ² Because the exceptions under Rule 123 “parallel their public records law counterparts,” courts “apply
28 existing standards and public records caselaw” in interpreting Rule 123. *London*, 206 Ariz. at 493, 80
P.3d at 772 n.2.

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3 DATED: December 27th, 2011

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8 By: 

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10 Copy of the foregoing delivered this 27th day
11 of December 27th, 2011, to:

12 Sheila Polk
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15 by 